



U.S. Department of Justice

*United States Attorney
District of New Jersey*

Catherine R. Murphy
Assistant U.S. Attorney

970 Broad Street
Newark, New Jersey 07102

973-297-2098

September 7, 2021

The Honorable Peter G. Sheridan
United States District Judge
District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
Trenton, New Jersey 08608

Re: *United States v. Richard Scalea*, No. 18-cr-620 (PGS)
Response to Richard Scalea's Letter (ECF 38)

Dear Judge Sheridan:

The Government submits this letter in response to defendant Richard Scalea's ("Scalea" or "Defendant") letter to Your Honor, which was received by the Court on August 24, 2021 (ECF 38). Scalea previously filed two motions seeking a reduction of sentence pursuant to the First Step Act (18 U.S.C. § 3582(c)(1)(A)) (ECF Nos. 25, 27, 31, 32), both of which were denied by Your Honor (ECF Nos. 30, 36). Scalea has filed a notice of appeal of Your Honor's August 18, 2021 decision. ECF No. 39.

Scalea's latest submission claims that the situation at Fort Dix "has turned very dangerous" and outlines various "bullet points" from a town hall meeting at Fort Dix.¹ ECF 38 at 1. That perceived danger is belied by the fact that presently there are **no** inmates who are reported positive for COVID-19 at Fort Dix, which houses 2,918 inmates (2,710 inmates at the FCI and 208 inmates at the Camp). See BOP COVID-19 Update, available at <https://www.bop.gov/coronavirus> (last visited September 5, 2021) (emphasis added); Fort Dix Webpage, available at <https://www.bop.gov/locations/institutions/ftd/> (last visited September 5, 2021).²

¹ Scalea appears to claim he did not actually attend a town hall meeting, but learned the information outlined in his submission "from another building during [his] 1 HR of outdoor recreation." ECF 38 at 1.

² The Government has outlined in its previous submissions the Bureau of Prisons' ("BOP") response to the COVID-19 pandemic, and the Government incorporates those

Scalea's risk of severe illness from COVID-19 has been further mitigated by FCI Fort Dix's vaccination efforts. The facility has fully vaccinated 256 staff members, and 1,899 inmates—including Scalea, who had received both doses of the COVID-19 vaccine as of April 13, 2021. ECF 33, Exhibit B at 66. The CDC reports that the approved vaccines are proving highly effective against the Delta variant of COVID-19, stating, "FDA-authorized COVID-19 vaccines protect against Delta and other known variants." The CDC adds: "Infections happen in only a small proportion of people who are fully vaccinated, even with the Delta variant."³ Accordingly, once a vaccine is available to an inmate—as it was here—compassionate release is not warranted based on the threat of COVID-19 alone. *See United States v. Reed*, 2021 WL 2681498, at *4 (E.D. Pa. June 30, 2021) (Schmehl, J.) ("Now that COVID-19 vaccinations are being administered throughout the Bureau of Prisons, compassionate release motions [based on COVID-19] generally lack merit.").

Scalea notes in his letter that "[a]ccording to the new CDC system for prisons, we are at the red stage, the worst of the three." ECF 38 at 1. The Government believes Scalea is referring to Fort Dix's "modified operational level." *See* BOP COVID-19 Update, available at <https://www.bop.gov/coronavirus> (last visited September 5, 2021). According to the BOP, institutional operational levels (Level 1(green), Level 2 (yellow), or Level 3 (red)) are based on a number of factors, and "[a]t each level, an infection prevention procedure or modification to operations such as inmate programming and services may be made to mitigate the risk and spread of COVID-19 in accordance with BOP pandemic guidance." *Id.* As of September 5, 2021, there were 98 Level 3 BOP facilities (including Fort Dix), and no Level 2 or Level 1 facilities. *Id.* While the Government recognizes that these infection prevention procedures may limit the programs and services available to inmates, they are designed to protect inmate health and safety.

submissions by reference. ECF Nos. 28, 33. The BOP's aggressive efforts with respect to COVID-19 have extended to FCI Fort Dix.

³ *See* <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html> (accessed September 5, 2021); <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html> (accessed September 5, 2021); *see also* <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (accessed September 5, 2021) ("Vaccines in the US are highly effective, including against the Delta variant.").

For the reasons set forth above, as well as in the Government's previous submissions (ECF Nos. 28, 33), and this Court's orders (ECF Nos. 30, 36), Scalea does not meet the § 3582(c)(1)(A)'s criteria for compassionate release.

Respectfully Submitted,
RACHAEL A. HONIG
ACTING UNITED STATES ATTORNEY

/s/ Catherine R. Murphy

CATHERINE R. MURPHY
Assistant U.S. Attorney
United States Attorney's Office
District of New Jersey

cc: Richard Scalea
Reg. No. 71151-050
FCI Fort Dix
Federal Correctional Institution
P.O. Box 2000
Joint Base MDL, NJ 08640